

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION**

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|-----------------------------|---|----------------------|
| TRACEY A. TOLES, |) | |
| Plaintiff, |) | CV 05-2061 |
| vs. |) | |
| |) | |
| CITY OF CEDAR FALLS, |) | COMPLAINT AND |
| and JOEL OLTROGGE, |) | JURY DEMAND |
| Defendants. |) | |

COMES NOW the Plaintiff Tracey A. Toles, by and through the undersigned attorneys,
and in support of her Complaint states the following:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Tracey A. Toles ("Tracey") is, and at all material times hereto, was a resident of Waterloo, Iowa.
2. Defendant City of Cedar Falls is a city located within Blackhawk County, Iowa.
3. Defendant Joel Oltrogge is, and at all material times, was a resident of Cedar Falls, Iowa and an employee of Defendant City of Cedar Falls as a police officer.
4. Jurisdiction is premised on 28 U.S.C. §§1343 and 1367.
5. Venue is proper in this District under 28 U.S.C. §1391(b) as a substantial part of the events giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

6. On or about September 25, 2003, Tracey attended a football game at Holmes Junior High School in Cedar Falls.
7. There was a disturbance at this particular football game involving players, students, and certain spectators.

8. Tracey had left the football game prior to the disturbance, and upon receiving a cell phone call and hearing commotion in the background, she decided to return to the junior high to check on the safety of her son and daughter.
9. As Tracey arrived back at the school, she saw her eighteen-year-old daughter, Danaila Toles, forcibly taken to the ground by a Cedar Falls police officer. Tracey watched in disbelief as the officer pushed her daughter's face into the ground, and forced his knee into her back, causing Tracey's daughter to vomit.
10. Tracey approached the officer and asked what was happening. In response to Tracey's question, Officer Joel Oltrogge grabbed her right thumb, forced it behind her back into a submission hold, and broke her thumb.
11. Tracey informed Officer Oltrogge that she was in pain, and needed to be let go. However, instead of releasing pressure, Officer Oltrogge tightened his grip, forced her arm further behind her back, and told her to "shut up or else I'll take you to jail." In response to Tracey's continued complaints of pain, Officer Oltrogge told her to "shut up."
12. Tracey was ultimately released, but was in considerable pain, and observed her thumb beginning to swell.
13. She asked several Cedar Falls police officers to move their vehicles so that she could get her blocked car out in order to go to the hospital for treatment; however, her requests were ignored.
14. After numerous requests regarding her need for medical attention, Tracey was finally directed to an ambulance, and she was taken to Allen Memorial Hospital.

COUNT I
42 U.S.C. § 1983

15. Tracey hereby re-alleges paragraphs 1-14 as if fully set forth herein.
16. Acting under color of State law, Defendant officer, in his individual and official capacity, violated the civil rights of Tracey granted to her by the Fourth and Fourteenth Amendments to the Constitution of the United States by using force which was clearly excessive in light of the circumstances existing at the time of the arrest. The defendant officer's use of excessive force with the intent to inflict unnecessary harm upon Tracey, and such use of force, caused physical and mental injuries to Tracey.
17. Tracey further alleges that the implementation of policies, customs, or official acts of the Defendant City of Cedar Falls were a cause of the constitutional violations.
18. Tracey has been damaged as a result of the violation of her civil rights by Defendants. Damages include past and future pain, suffering, mental anguish, medical expenses, and lost income.
19. Defendant officer's conduct was reckless and exhibited a callous indifference to Tracey's rights entitling Tracey to punitive damages.

WHEREFORE, Tracey demands judgment against Defendants in a fair and reasonable monetary amount to be determined by the trier of fact, along with punitive damages against the officer, attorney fees as provided by 42 U.S.C. §1988, interest as provided by law, and the costs of this action, as well as such other relief as may be deemed just and equitable in the premises.

COUNT II
ASSAULT AND BATTERY

20. Tracey hereby re-alleges paragraphs 1-14 as if fully set forth herein.
21. Defendant officer committed an assault and battery on Tracey by intentionally and unlawfully threatening Tracey with present ability to do violence to her; putting her in reasonable and serious apprehension of a harmful and offensive contact against her person, and intentionally, maliciously, and unlawfully injuring Tracey by means of harmful and offensive contact against her person.
22. The assault and battery was a proximate cause of damages to Tracey including past and future pain, suffering and mental anguish, and medical expenses.
23. The acts of Defendant officer were willful, wanton, and reckless entitling Plaintiff to punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendant officer in a fair and reasonable monetary amount to be determined by the trier of fact, along with punitive damages against the officer, and interest as provided by law and the costs of this action, as well as such other relief as may be deemed just and equitable in the premises.

JURY DEMAND

COMES NOW, Plaintiff, Tracey A. Toles, by and through her attorneys, Eells & Tronvold Law Offices, P.L.C., and requests a trial by jury.

/s/ Jeffrey R. Tronvold.
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/s/ Raphael M. Scheetz.
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Original Filed.

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of July, 2005, I electronically filed the foregoing with the Clerk of Court using the ECF system which will send notification of such filing to the following: